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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,436	10/17/2002	Frederick L. Travelute III	3000.166	8668
21176 7590 06/15/2007 SUMMA, ALLAN & ADDITON, P.A. 11610 NORTH COMMUNITY HOUSE ROAD SUITE 200 CHARLOTTE, NC 28277			EXAMINER CHRISS, JENNIFER A	
			ART UNIT 1771	PAPER NUMBER
			MAIL DATE 06/15/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/065,436	<b>Applicant(s)</b> TRAVELUTE ET AL.	
	<b>Examiner</b> Jennifer A. Chriss	<b>Art Unit</b> 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 2,4-38 and 72-80 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,4-38 and 72-80 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. In view of the Board of Patent Appeals and Interferences Decision filed on March 8, 2007, PROSECUTION IS HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 102***

3. Claims 2 – 5 and 11 – 15 remain rejected under 35 U.S.C. 102(b) as being anticipated by Shiozaki et al. (US 4,336,307). The rejection has been affirmed by the Board of Patent Appeals and Interferences according to a decision filed on March 8, 2007.

***Claim Rejections - 35 USC § 102/103***

4. Claims 6 – 10, 16 – 38 and 72 – 80 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Shiozaki et al. (US 4,336,307) as evidenced by Applicant's own admission.

As to claim 7, Shiozaki teaches hollow water absorbing polyester filaments (Abstract). Shiozaki does not elaborate on the length of the fibers but simply states that the hollow polyester filament may be in the form of staple fibers (column 6, lines 50 – 60). As discussed in Applicant's Specification, staple fiber length is typically one-quarter inch to two inches (page 5, [0025]). The Examiner submits that the staple fibers of Shiozaki have a length ranging from one-quarter inch to two inches.

As to claims 8 – 10, Shiozaki teaches hollow water absorbing polyester filaments (Abstract) that can be used in nonwoven fabrics (column 6, lines 50 – 60).

As to claim 16, Shiozaki teaches hollow water absorbing polyester filaments (Abstract).

As to claim 17, Shiozaki teaches that the polyester filament is preferably polyethylene terephthalate (column 3, lines 35 – 40). It should be noted that the

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transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or steps "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention. In re Herz, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976). The burden is upon the Applicant to show that the additional components do affect the basic and novel characteristics of the invention. For the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising." See MPEP 2111.03.

As to claim 18, Shiozaki teaches hollow water absorbing polyester filaments (Abstract).

As to claim 19, Shiozaki teaches that the polyester filament may have a round cross-sectional profile and the hollow may be round (column 5, lines 35 – 45).

As to claim 20, Shiozaki teaches that the hollow polyester filament may be in the form of staple fibers (column 6, lines 50 – 60).

As to claim 21, Shiozaki teaches that the hollow polyester filament may be in the form of staple fibers and can be used in nonwoven fabrics (column 6, lines 50 – 60).

As to claim 22, Shiozaki teaches that the hollow polyester filament can be used in nonwoven fabrics (column 6, lines 50 – 60). Shiozaki teaches that the filaments have a number of fine pores through which the hollow is connected to the outside of the filament and each exhibiting excellent water and moisture absorbing property (column 1, lines 10 – 15).

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As to claim 23, Shiozaki teaches that the filament can have an irregular shape (column 5, lines 30 – 40); the Examiner equates this to an asymmetrical cross section.

As to claim 24, Shiozaki teaches that the polyester filament may have a round cross-sectional profile and the hollow may be round (column 5, lines 35 – 45). Shiozaki notes that the fiber can have two or more hollows (column 5, lines 20 – 40); it should be noted that if the fiber has two or more hollows, at least one of the hollows would be not coaxial with the fiber.

As to claim 25, Shiozaki teaches that the hollow polyester filament may be in the form of staple fibers (column 6, lines 50 – 60).

As to claim 26, Shiozaki teaches that the hollow polyester filament may be in the form of staple fibers and can be used in nonwoven fabrics (column 6, lines 50 – 60).

As to claim 27, Shiozaki teaches that teaches hollow water absorbing polyester filaments (Abstract) may be in the form of staple fibers and can be used in nonwoven fabrics (column 6, lines 50 – 60).

As to claim 28, Shiozaki teaches hollow water absorbing polyester filaments (Abstract). Shiozaki teaches that the polyester filament is preferably polyethylene terephthalate (column 3, lines 35 – 40). Please note comments above concerning “consisting essentially” of language.

As to claim 29, Shiozaki teaches hollow water absorbing polyester filaments (Abstract). Shiozaki teaches that the filament can have an irregular shape (column 5, lines 30 – 40); the Examiner equates this to asymmetrical. Shiozaki teaches that the filaments have a number of fine pores through which the hollow is connected to the

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outside of the filament and each exhibiting excellent water and moisture absorbing property (column 1, lines 10 – 15). It is the position of the Examiner that the pores and the hollow portion of the filament are “sufficient openings” to fill with liquid, in this case, water.

As to claim 30, Shiozaki teaches hollow water absorbing polyester filaments (Abstract). Shiozaki teaches that the filaments have a number of fine pores through which the hollow is connected to the outside of the filament and each exhibiting excellent water and moisture absorbing property (column 1, lines 10 – 15). It is the position of the Examiner that the pores and the hollow portion of the filament are “sufficient openings” to fill with liquid, in this case, water. Shiozaki teaches that the filament can have an irregular shape (column 5, lines 30 – 40); the Examiner equates this to asymmetrical.

As to claim 31, Shiozaki teaches that the polyester filament is preferably polyethylene terephthalate (column 3, lines 35 – 40). Please note comments above concerning “consisting essentially” of language.

As to claim 32, Shiozaki teaches that the polyester filament may have a round cross-sectional profile and the hollow may be round (column 5, lines 35 – 45). Shiozaki notes that the fiber can have two or more hollows (column 5, lines 20 – 40); it should be noted that if the fiber has two or more hollows, at least one of the hollows would be not coaxial with the fiber.

As to claim 33, Shiozaki teaches that the hollow polyester filament may be in the form of staple fibers (column 6, lines 50 – 60).

As to claim 34, Shiozaki does not elaborate on the length of the fibers but simply states that the hollow polyester filament may be in the form of staple fibers (column 6, lines 50 – 60). As discussed in Applicant's Specification, staple fiber length is typically one-quarter inch to two inches (page 5, [0025]). The Examiner submits that the staple fibers of Shiozaki have a length ranging from one-quarter inch to two inches.

As to claims 35 – 36, Shiozaki teaches hollow water absorbing polyester filaments (Abstract) that can be used in nonwoven fabrics (column 6, lines 50 – 60).

As to claims 37 - 38, Shiozaki teaches hollow water absorbing polyester filaments (Abstract). Shiozaki teaches that the polyester filament is preferably polyethylene terephthalate (column 3, lines 35 – 40). Please note comments above concerning "consisting essentially" of language. Shiozaki teaches that the hollow polyester filament may be in the form of staple fibers (column 6, lines 50 – 60). Shiozaki teaches that the filaments have a number of fine pores through which the hollow is connected to the outside of the filament and each exhibiting excellent water and moisture absorbing property (column 1, lines 10 – 15). It is the position of the Examiner that the pores and the hollow portion of the filament are "sufficient openings" to fill with liquid, in this case, water. Shiozaki teaches that the polyester filament may have a round cross-sectional profile and the hollow may be round (column 5, lines 35 – 45). Shiozaki notes that the fiber can have two or more hollows (column 5, lines 20 – 40); it should be noted that if the fiber has two or more hollows, at least one of the hollows would be not coaxial with the fiber.



As to claims 72 – 73 and 76 - 77, Shiozaki teaches hollow water absorbing polyester filaments (Abstract). Shiozaki teaches that the filaments have a number of fine pores through which the hollow is connected to the outside of the filament and each exhibiting excellent water and moisture absorbing property (column 1, lines 10 – 15). It is the position of the Examiner that the pores and the hollow portion of the filament are “sufficient openings” to fill with liquid, in this case, water. Shiozaki does not elaborate on the length of the fibers but simply states that the hollow polyester filament may be in the form of staple fibers (column 6, lines 50 – 60). As discussed in Applicant’s Specification, staple fiber length is typically one-quarter inch to two inches (page 5, [0025]). The Examiner submits that the staple fibers of Shiozaki have a length ranging from one-quarter inch to two inches. The Examiner equates the length of one-quarter inch to Applicant’s “minimum length” and the two inches to Applicant’s “maximum length”.

As to claims 74 – 75, Shiozaki teaches that the polyester filament is preferably polyethylene terephthalate (column 3, lines 35 – 40).

As to claims 78 – 80, Shiozaki teaches that the fibers have a denier of 10 or less (column 6, lines 50 – 60).

Shiozaki teaches the claimed invention above but fails to teach that the fibers have a length sufficient to support a meniscus of water at each end thereof as required by claims 6 and 72, the moisture absorptive capability is between 10 – 30% by volume as required by claim 16 and 28 and that the minimum length supports a meniscus of water and the maximum length is where the filament will fill entirely with a liquid. It is


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reasonable to presume that the ability to support a meniscus of water at each end thereof, lengths to support a meniscus of water or to fill the filament entirely with a liquid and moisture absorptive capability is inherent to Shiozaki. Support for said presumption is found in the use of like materials (i.e. a hollow absorbent polyester staple fiber having a length ranging from one-quarter to 2 inches) which would result in the claimed properties. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties would obviously have been present once the Shiozaki product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A. Chriss whose telephone number is 571-272-7783. The examiner can normally be reached on Monday - Friday 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571 - 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jennifer Chriss  
May 29, 2007

  
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